IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.875 OF 2007

The Commissioner of Income Tax-3
Mumbai .. Petitioner

V/s

Income Tax Appellate Tribunal & Ors. .. Respondents

Mr.Ashok Kotangale with Mr.Sahadevan for Petitioner.

Mr.S.E.Dastur, Sr.Advocate with Mr.Raj Darak and Mr.Nitesh Joshi for Respondent No.2.

CORAM : DR.S.RADHAKRISHNAN, & V.C.DAGA, JJ.

DATE : 4th May, 2007.

P.C.:

1. Heard the learned Counsel for the Petitioner and the learned Senior Counsel for Respondent No.2. By this Petition, the Petitioner is challenging an interlocutory order of grant of stay passed by the Income Tax Appellate Tribunal on 12th March, 2007 in a pending Appeal. We do not find anything erroneous or illegal in the reasoning adopted by the Tribunal while granting the stay. The reasonings adopted by the Tribunal appear to be fair and reasonable. Over and above the Circular No.530 dated 6th March, 1989 issued by the CBDT also fully supports the case of the Respondent No.2. Clause 2(ii) of the said Circular is relevant which reads as under:-

> "2. Having regard to the proper and efficient management of the work of collection of revenue, the Board has considered it necessary and expedient to order that on an application being filed by the assessee in this behalf, the Assessing Officer will exercise his discretion under section 220(6) of the Act (subject to such conditions as he may think fit to impose) so as to treat the assessee as not being

in default in respect of the amount in dispute in the appeal in the following situations:-

(i).....

(ii) the demand in dispute relates to issues that have been decided in favour of the assessee in an earlier order by an appellate authority or court in the assessee's own case."

2. Under these circumstances, petition is totally devoid of merits. Hence the petition stands dismissed.

(V.C.DAGA, J.) **(DR.S.RADHAKRISHNAN,J.)**